department is engaged in work which is purely local, and the city in conducting a fire department is not acting under authority deputed to it by the legislature but is carrying out work which strictly concerns the municipality itself.[25]

Ordinances of towns and cities may not control the hours of labor of persons engaged in public work except where they may be upheld as a valid exercise of the police power.[26]

The Hours of Service Act of the Interstate Commerce Commission supercedes State regulations in cases where this act is applicable.[27]

CENSORSHIP OF MOVING PICTURE FILMS AS AN INTERFERENCE WITH THE FREEDOM OF THE PRESS.—A question of novel impression was raised in the recent case of *Mutual Film Co.* v. *Industrial Commission of Ohio,* 215 Fed. 138, by the contention of counsel for the defendant corporations that a State statute providing for censorship of moving picture films is unconstitutional as abridging the freedom of the press. The statute established a board of censors to which all films were required to be submitted before being publicly exhibited in the State, and prohibited the exhibition of any film not bearing the stamp of approval of the board. Only such films as were in the judgment and discretion of the board of censors of a moral, educational, or amusing and harmless character could be passed and approved by the board. A fee for the inspection and penalties for violation of the act were provided, with the right to file a petition for hearing on the reasonableness and lawfulness of the order of the board of censors.

The guaranty of freedom of speech and of the press under the First Amendment to the Federal Constitution prevents Congress only, and not the State legislatures, from passing statutes abridging the freedom of the press, because the first eight amendments to the Constitution have reference to the powers to be exercised by the national government and not to those of the States.[1] Nor did the privileges and immunities clause of the Fourteenth Amendment aid the defendants because corporations are not "citizens" within the true meaning of the clause.[2] The Constitution of Ohio, however, contains a section guaranteeing freedom of the press.[3] Without passing upon the question whether or not the corporations

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[25] People *v.* Sturgis, *supra.*

[26] Fiske *v.* People, 188 Ill. 206, 58 N. E. 985, 52 L. R. A. 291; *Ex parte* Kubach, 85 Cal. 274, 24 Pac. 737, 9 L. R. A. 482; *In re* Broad, *supra.*

[27] Erie R. Co. *v.* People of N. Y., 34 Sup. Ct. 756.

[1] Eilenbecker *v.* Plymouth County, 134 U. S. 31, 34.

[2] Blake *v.* McClurg, 172 U. S. 239; Orient Ins. Co. *v.* Daggs, 172 U. S. 557.

[3] "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press." A. 1, § 11.

were citizens within the meaning of the Ohio Constitution, the court considered the statute upon its merits. The contention of the defendants was not that persons displaying improper pictures may not be punished after the fact, but that the display itself cannot be prevented. The defendants sought to show that the "Mutual Weekly" was a press enterprise[4] in order to bring themselves within the doctrine that the constitutional liberty of the press consists in the right to publish freely whatever it pleases, with immunity therefor except so far as the publication is blasphemous, obscene, seditious, or scandalous; that is, the right to publish anything, subject to criminal or civil liability after the fact for abuse of the right.[5] Even this doctrine has the limitation that the State legislature can constitutionally enact laws intended to prevent the publication and sale of newspapers especially devoted to the dissemination of scandals and accounts of obscene and immoral conduct.[6] The contention that the "Mutual Weekly" is as much a press enterprise as any of the standard magazines, periodicals, and newspapers was unique but superficial, for on analysis of the bills and affidavits, even without familiar knowledge, the court held very properly that an exhibition of the motion picture films, with its inclosure, surroundings, and attendance, has all the material attributes of an ordinary theater. The films are, as it were, the actors, the stage players, to produce the drama or other amusement.[7] The Ohio statute apparently provided that the principles of a public license should be applied to moving pictures in places of amusement, whether of dramas, of current events, of industrial, scientific, or organic processes, or the like.

No repugnancy exists between the legislative power to regulate theaters and the guaranty of freedom of speech and of the press. It was held by a divided court that a judicial order forbidding the representation upon a theatrical stage of the facts of a particular

[4] The complainants averred in their bill: "That the motion pictures, the films for which are purchased, sold and leased by complainant, depict dramatizations of standard novels and short stories and the performance of standard dramas. * * * That they also exhibit many subjects of scientific interest, such as showing the various uses that may be made of electricity, showing the manner of development and growth of various forms of animal and plant life, giving pictures of trips of exploration * * * and pictures of other subjects covering a range as wide as life itself, which are educational, instructive, and amusing. That one of the most important classes of subjects exhibited in complainants' motion picture films is the depicting of events * * * described in words and by photographs in newspapers, weekly periodicals, magazines, and other publications; * * * this regular furnishing and publishing of news through the medium of motion pictures being done under the name of the 'Mutual Weekly.'" The "Mutual Weekly" is then averred to be as much a press enterprise as any newspaper, magazine, or other periodical.

[5] Bronson *v.* Bruce, 59 Mich. 467, 26 N. W. 671; State *v.* Shephers, 177 Mo. 205, 76 S. W. 79.

[6] Preston *v.* Finley, 72 Fed. 850; State *v.* McKee, 73 Conn. 18, 46 Atl. 409, 49 L. R. A. 542.

[7] Kalem Co. *v.* Harper Bros., 222 U. S. 55, 61.

criminal case, then on trial, was an infringement of the State constitutional guaranty of freedom of speech.[8] But the same court held in a later case,[9] without alluding to the previous case, that the State has the right to license, to regulate, and to prohibit exhibitions, shows, and places of amusement. The two cases can be distinguished on the ground that the legislature only, and not the judiciary, possesses authority to regulate theaters. Even the liberty of the press is limited, but not abridged, by laws passed in the exercise of the police power, for the protection of the morals of the people.[10] Any reasonable exaction or denial of licenses and incidental regulation of theatrical performances is regarded as a proper exercise of the police power.[11] Furthermore, since the defendant corporations devote their films to a use in which the public is interested, they must for that reason submit to the control of the public acting through governmental agencies as long as they continue such use.[12]

The right of a State to regulate the use of moving picture films has been upheld repeatedly.[13] An act providing for the regulation of moving picture machines and for the appointment of a "board for examining moving picture operators" is constitutional.[14] An ordinance requiring those engaged in exhibiting moving pictures to secure a permit for the exhibition of pictures, and forbidding the chief of police to issue such permit for the exhibition of any obscene or immoral pictures, was held constitutional, even though there is no provision for an appeal to a court from his decision.[15]

A censorship, then, reasonably related to the exhibition of films within the State, is within the police power of the State, and the statute so providing does not abridge the Federal or usual State constitutional provisions safeguarding the freedom of speech and of the press.

THE VALIDITY OF LEGISLATIVE REGULATION OF THE CONSTITUTIONAL RIGHT OF TRIAL BY JURY.—The right of trial by jury as a constitutional guarantee is intended to preserve this right as it existed at common law at the time of the adoption of the Constitu-

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[8] Dailey *v.* Superior Court, 112 Cal. 94, 44 Pac. 458, 53 Am. St. Rep. 160.

[9] Greenberg *v.* Western Turf Ass'n, 148 Cal. 126, 82 Pac. 684.

[10] 2 STORY, CONST., 5 ed., § 1880.

[11] Baker *v.* Cincinnati, 11 Ohio St. 534; COOLEY, CONST. LIM., 7 ed., § 884.

[12] Atlantic Coast Line R. R. *v.* City of Goldsboro, 232 U. S. 548.

[13] Higgins *v.* Lacroix, 119 Minn. 145, 137 N. W. 417; Dreyfus *v.* City of Montgomery, 4 Ala. App. 270, 58 South. 730; Lauelle *v.* Bush (Cal.), 119 Pac. 953.

[14] State *v.* Loden, 117 Md. 373, 83 Atl. 564, 40 L. R. A. (N. S.) 193.

[15] Block *v.* City of Chicago, 239 Ill. 251, 87 N. E. 1011, 130 Am. St. Rep. 219.